THE HONOURABLE SMT JUSTICE T. MEENA KUMARI

AND

THE HONOURABLE MR JUSTICE P. LAKSHMANA REDDY

WRIT PETITION NO: 19808 OF 1998

DATED: 21-09-2005

Between:

Gopal, S/o. Ramla, aged about 37 years,

Armed Reserve Police Constable,

A.R. head Quarters, Amberpet,

Hyderabad. ……Petitioner

AND

1. The Government of Andhra Pradesh.

represented by its Principal Secretary,

Home, Department, Secretariat Buildings,

Saifabad, Hyderabad and four others. ……Respondents

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ORDER:- (Per the Hon'ble Sri Justice. P.Lakshmana Reddy)

This writ petition is filed seeking a direction, in the nature of writ of certiorari, to set aside the order of the A.P. Administrative Tribunal, Hyderabad in O.A.No.5179 of 1994, dated 22-07-1993.

The writ petitioner herein is the applicant and the respondents 1 to 4 herein are the respondents in O.A. The status of the parties will be referred to as arrayed before the Tribunal.

It is the case of the applicant that he was initially appointed as A.R. Police Constable on 7-3-1980 and included in the 'C" list of ARPCs fit to act as A.P. Head Constables. The petitioner was promoted as Head Constable by the 4th respondent in the proceedings dated 15-3-1990. While so, a charge memo was issued by the Deputy Superintendent of Police, Armed Reserve, Rangareddy District in the proceedings dated 26-12-1991 alleging desertion of duty. After conducting an enquiry, the 4th respondent imposed the punishment of compulsory retirement on the ground that he was treated as a deserter due to his unauthorized absence. Aggrieved by the same, the applicant filed an appeal before the 3rd respondent on 16-8-1993 and the third respondent confirmed the order of the 4th respondent, against which the applicant filed a revision before the 2nd respondent on 4-10-1993 and the 2nd respondent in turn by the proceedings dated 28-12-1993, rejected the revision. However, being aggrieved by the order of the 2nd respondent, the applicant filed a mercy petition before the 1st respondent on 9-2-1994 and the 1st respondent by G.O.Ms.No.294, Home (Police.D) Department, dated 12-4-1994 modified the order of the 4th respondent directing compulsory retirement, to that of reversion to the minimum pay scale of Armed Reserved Police Constable and directed that the applicant should be reinstated into service as Armed Reserve Police Constable and the period spent by the applicant out of employment should be treated as 'dies non' and consequent on the orders in G.O.Ms.No.294, dated 12-4-1994, the 4th respondent by order dated 4-5-1994 reinstated the applicant. Questioning the legality and validity of the impugned G.O, the applicant filed the O.A. No.5179 of 1994. On considering the material on record, the Tribunal while observing that in

view of the sympathy extended by the Government already, it is for the applicant to put in a representation before the Government either to protect his pay in the time scale of pay in the post from which he was promoted or to fix his pay in the promoted scale at the minimum of the scale, disposed of the O.A. However, it is further observed by the Tribunal that it cannot give any mandamus to the respondents to revise the punishment and that, it is open to the respondents to consider such a representation if made by the applicant and pass appropriate orders thereon. Aggrieved by the same, the present wit petition is filed.

Heard the learned counsel for the applicant and the learned G.P. for Services-I.

The learned Counsel for the applicant contended that Rule 9 of the A.P. Civil Services (C.C. & A) Rules, 1991, deals with Major penalties whereas sub rule (vi) of Rule 9 prescribes such major penalties. It is further contended that as per the said Sub-Rule, imposing of punishment shall be one of the punishments mentioned therein and not more than one. Placing reliance on the said sub rule, it is further contended that in the instant case, the punishment is modified by reverting the petitioner to a lower grade i.e., constable but, at the same time, he was also imposed punishment of fixing his pay at the initial time scale of pay in the lower post and therefore, such a modification, is nothing but a violation of the above Rules and on that count, one of the punishments under modification, is liable to be liable to be set aside.

On the other hand, the learned G.P. for Services-I appearing for the respondents submitted that since the case of the applicant has been considered by the Government on a mercy petition and the punishment imposed by the authorities, has been modified, the question of violation of the provisions of Rule 9 Sub-Rule (vi) of the Rules, does not arise and therefore, the Tribunal has rightly dismissed the O.A. and hence, the order of the Tribunal, does not require any interference by this Court.

The crux of the point that arises for consideration in this writ petition is as to whether the punishment as modified by the Government, is in consonance with the provisions of sub rule (vi) of Rule 9 of the Rules.

Perused the material available on record and the order under appeal.

We have appreciated the rival contentions of the respective parties.

At this stage, it is not out of place to mention the provisions of Sub-Rule (vi) of Rule 9

of the A.P. Civil Services (C.C.& A) Rules, 1991, which reads as under:

> "(vi) Reduction to a lower rank in the seniority list or to a lower stage in the time scale of pay or to a lower time scale of pay not being lower than that to which he was directly recruited or to lower grade or post not being lower than that to which he was directly recruited, whether in the same service or in another Service, State or Subordinate."

As seen from the said Rule, major penalties are enumerated thereunder. Different types of major penalties are mentioned therein. The kinds of major punishments as contemplated under the above rule are mentioned by using the word "or" and therefore it can be construed that any one of such punishments can be imposed as a measure of major punishment. But, contrary to that, if more than two punishments are imposed, the same is nothing but amounting to double punishment which is violation of the sub Rule (vi) of Rule 9 of the Rules. Therefore, we find considerable force in the contention of the learned Counsel for the applicant that even by way of modification of punishment, imposing two types of major penalties are not sustainable and are liable to be set aside.

In this view of the matter, We feel that the Tribunal is not justified in holding that there is no irregularity or illegality in the order under G.O.Ms.No:294 and the applicant cannot question the same on the ground that his case was considered on a mercy petition. Therefore, we hold that the modification of the punishment by way of G.O.Ms.294, dated 12.4.1994, is not in consonance with the provisions of sub Rule (vi) of Rule 9 of the Rules on the ground that two major penalties as contemplated under sub Rule (vi) cannot be imposed. Hence, we feel it appropriate to modify the punishment as modified under G.O. in question, to that of reversion to the post of Constable from the post of the Head constable. However, we make it clear that the respondents shall revise the pay scale of the applicant treating the punishment as a reversion from the post of Head constable to the post of constable. With regard to the unauthorized absence, it is made clear that treating of the period as "dies non" holds good.

Subject to the above modification, this writ petition is accordingly allowed. No costs.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt: 21.09.2005

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